

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Carriage of Digital Television Broadcast`)	CS Docket No. 98-120
Signals: Amendments to Part 76 of the)	
Commission's Rules)	

To: The Commission

Reply Comments

Maranatha Broadcasting Company, Inc. ("MBC"), licensee of WFMZ-TV, Allentown, Pennsylvania, and permittee of WFMZ-DT,¹ hereby submits these brief comments in response to several of the Oppositions to the Petitions for Reconsideration in the above-captioned proceeding by NAB/MSTV and the Joint Petitioners.

These comments illustrate, through a single example, how the current structure of the cable television industry – in the absence of a multi-casting must-carry rule – diminishes the diversity of programming available to cable subscribers and threatens to relegate independent television stations to permanent second-class status in the digital age.

WFMZ-DT began multi-casting in February 2001 with a 24-hour weather service, in addition to a standard-definition simulcast of its NTSC programming. The weather service – recognized by *Broadcasting & Cable* magazine as the nation's "first all-local, 24-hour digital weather channel" – includes content provided by Accu-Weather, Inc., localized

¹ WFMZ-DT has operated under grants of Special Temporary Authority since June 1999.

for the region, plus program content from WFMZ-TV's own meteorologists.² The digital simulcast of WFMZ-TV's NTSC programming includes WFMZ-TV's schedule of 59 local newscasts each week, including five nightly Spanish-language newscasts that were the first of their kind in the Philadelphia market. In addition, since 2003, WFMZ-DT has broadcast the complete schedule of HDNet, including music, sports and public affairs programming.³ For the most part, however, most cable television subscribers in the Philadelphia market are denied access to this diverse array of digital programming. The exception – as these Reply Comments will show -- illustrates, vividly, the need and the reason for a multi-casting must-carry rule.

Oppositions to the petitions for reconsideration were filed by, among others, The Weather Channel (owned by Landmark Communications, Inc.). The Chairman and CEO of Landmark Communications is also a member of the Board of Directors of Comcast, the nation's largest cable operator and the dominant cable operator in the Philadelphia local television market, where it has 1.9 million subscribers.⁴ Comcast, which also opposed reconsideration, also owns a number of cable program services, including the Golf Channel, Outdoor Life, E! and TV One. Among the others filing oppositions to reconsideration were the second largest cable operator, Time Warner (also the owner of

² Other content on the Accu-Weather channel includes live pictures from rotating traffic cameras. Streaming video of the WFMZ-DT Accu-Weather channel is available at www.accuweather.com.

³ MBC is in the process of installing a server to replace HDNet's suspended satellite delivery of network programming.

⁴ Approximately 79 percent of Philadelphia market households subscribe to cable.

CNN, TNT, TBS and TCM); Cablevision (owner of, in addition to its cable television properties, the AMC, IFC and WE cable channels); Court TV (owned by Time Warner and Liberty Media); Discover Communications (owned by Liberty Media and News Corp.), A&E (owned by NBC, Disney – with its own cable programming channels – and Hearst) and Hallmark, Outdoor Network, the Game Show Network and Starz, all owned by Liberty Media. The cable television industry – the opponents of a multi-casting must-carry rule – is, therefore, characterized by both vertical integration and incestuous corporate relationships linking numerous cable channels. The consequences for independent television stations, who compete with cable programming services for audiences and with cable operators for local advertising revenue, are profoundly anti-competitive.

WFMZ-DT's digital Accu-Weather service is carried only on the cable systems in Northampton and Lehigh counties, which are owned by Service Electric and RCN and which happen to be the principal exceptions to Comcast's dominance of cable television services in the Philadelphia market.⁵ Those systems have carried the Accu-Weather channel since its inception. The manager of Comcast's cable system in Berks County – served by WFMZ-TV with two daily half-hour newscasts with content specifically of interest to Berks County – told MBC President Barry Fisher on several occasions that he would like to carry WFMZ-TV's weather service on the Berks County system but, notwithstanding several conferences with Comcast corporate executives, approval has not been forthcoming.

⁵ The WFMZ-DT digital weather channel is also carried by Blue Ridge Cable, in Carbon County, which is outside the Philadelphia DMA. It is no coincidence that, like Service Electric and RCN, Blue Ridge Cable is not owned by one of the integrated cable/programming monoliths.

The Weather Channel offers its own 24-hour localized weather service, Weatherscan, on digital cable channels. Although it lacks the locally-originated content and live video that is part of WFMZ-DT's weather service, the two services are directly competitive. NBC offers a similar channel, Weather Plus. While Comcast has refused since 2001 to carry MBC's digital Accu-Weather channel, all of its cable systems in Philadelphia and its Pennsylvania suburbs – including Berks County – carry WeatherScan – owned by a company whose Chairman sits on Comcast's board – and channels launched years after MBC's Accu-Weather channel, including the NBC Weather Plus service and a weather service (maps and radar) from the Philadelphia ABC affiliate. Most recently, the Berks County system manager has told Mr. Fisher that, because Comcast's headquarters has already required carriage of two weather channels on the system's digital tier, he no longer wants to add the Accu-Weather channel.

It may be true, as The Weather Channel alleges in its Opposition (p. 5), that the NBC Weather Plus channel “has acquired widespread distribution without the assistance of multicast must-carry” but it is also true that Comcast's decisions to carry Weatherscan and Weather Plus, and deny carriage on its Berks County and other Philadelphia market cable systems to MBC's Accu-Weather channel, reflect forces that are anti-competitive and discriminate against independent television stations.

According to The Weather Channel (*Opposition*, p. 6), local broadcasters have five tools to “leverage” cable carriage of new digital programming streams. Those include: (a) cross-promotion on the broadcaster's main channel; (b) promotion on popular programs on national broadcast networks; (c) cross-promotion on affiliated cable services; (d) requiring multicast network carriage through corporate level retransmission consent

agreements between network O&O's and major cable television operators; (e) bundling multicast service with more established cable programming networks as part of package deals for carriage. The Weather Channel's list proves the case for multi-casting must-carry. WFMZ-DT and other independent stations simply do not have the "leverage" assumed by The Weather Channel for all television broadcasters. They do not have national network platforms on which to promote their new programming services; they do not have affiliated cable services; they cannot bundle their new services with more established cable networks; as MBC's experience with its weather service shows, they lack bargaining power with dominant cable operators such as Comcast with whom they compete for audiences and advertising revenue.⁶

The alternative to multi-casting must-carry offered by The Weather Channel and other opponents of reconsideration is entirely dependent on a broadcaster's ownership of multiple programming sources. It has nothing to do with the content of the programming, a diversity of programming sources, or preserving free over-the-air television broadcasting. The Weather Channel answer to multi-casting must-carry will create more media concentration by substituting "leverage" – and anti-competitive conduct – for the public interest.

The premise underlying the 1992 Act was the promotion of diversity by assuring that cable operators could not discriminate against independent television stations. The

⁶ It is not the purpose of these Reply Comments to cast aspersions on Comcast. However, it is clear that, as a dominant cable operator, Comcast has little incentive to carry the multiple programming streams of an independent television station operating in a single market, compared to its incentives to carry the programming of its own vertically-integrated cable channels, the programming of affiliated cable networks, and the programming of the major national broadcasting networks.

Weather Channel opposition, and the other oppositions, simply show that the failure to adopt a multi-casting must-carry rule will deny cable subscribers additional diversity of programming sources and condemn independent stations to permanent second-class citizenship. If a multi-casting must-carry rule is adopted, licensees like MBC, with a proven record of innovation, will develop more services like the Accu-Weather channel, including channels with longer blocs of continuous children's programming, and second-language news services. Without access to the 79 percent of Philadelphia-market viewers who subscribe to cable, the services that are being offered now, and others that could be offered in the future, will not be viable.

For the foregoing reasons, the petitions for reconsideration should be granted.

Respectfully submitted,

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June 9, 2005

CERTIFICATE OF SERVICE

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June 9, 2005